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M^r. S. JOHNS
SPEECH
TO THE LORDS IN THE
Vpper house of PARLAMENT
January 7. 1640.

CONCERNING
Ship-Money?



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Mr. S^t-I O H' N S
 S P E E C H
 CONCERNING
 Ship-money.

MY LORDS;

THe K N I G H T S, Citizens, and
 Burgesses, of the Commons
 House, have intrusted mee with
 a message to your Lordships,
 of a generall and very high con-
 cernment, so generall, that the whole body of
 the Kingdome, both Peeres and people, are in-
 terested in it, of so high a consequence, as
 that there is nothing that can concerne us
 nearer.

Its one of the *Grandia Regni*, so great, as that
 I shall not need to present it to your Lordships
 in a multiplying Glasse, it will appeare too big
 in its owne dimensions.

2. Its not that Ship-money hath beene levied upon us , but its that right whereby Shipmoney is claymed, which if it be true , is such as that it makes the payment of Shipmoney the gift and earnest penny of all we have.

Its not that our persons have beene imprisoned for payment of Ship-money, but that our persons and (as it is conceived) our lives too, are upon the same grounds of Law, delivered up to bare will and pleasure.

Its that our birth-right, our Ancestral-right, our condition of continuing Free-subjects , is lost, that of late there hath beene an endeavour to reduce us to the state of villainage , nay to a lower.

Its true, the Lord might taxe his villaine *De haute & de basse* , might take all his lands and goods , the villaine had no property against the Lord , the villaine he could not *Ire quod voluit* , hee had no liberty of person , the Lord might imprison him at his pleasure , but the villaines life was his owne , and not his Lords, the Law secured him that. But my Lords , as the Law stands now declared , its disputable , whether it doth so much for us.

My Lords , the subject of this Message is, to present the fence of the Commons to your Lordships ; That the Lawes of the Realme instituted at first , and freely assented unto , and chosen by their Ancestors for the preservation of themselves and us their descendants , in our persons

persons, lives and estates, have beene of late intrusted unto such hands, as have endeavoured to force upon them a contrary end to that, for which they were ordained, from defensive to turn them to offensive, and instead of protecting us, to make the Lawes the instrument of taking from us all wee have; Those carriages which have produced this sence of the Commons, I am commanded at this present to declare to your Lordships.

They are certaine extrajudiciall opinions delivered by the Judges at severall times, the one in November 1635. The other a yeare after in February 1636.

The Ship-writs that have issued to all the Counties of *England*, for these many yeares last past without intermission: The principall thing in these writs which I am to present to your Lordships, is not the charge and burthen which hath beene thereby imposed upon the subjects, though that be great, but the declarations in them of the Law, and of the right whereby this burthen may be imposed.

The last is, that Judgement in Master *Hampdens* case in the Exchequer upon these Shipwrits.

My Lords, the two last, that is, the Shipwrit, and the Judgement, because they are very long, I am onely to open them without reading, and to deliver them to your Lordships; the other two I am to read them, and then to deliver them to your Lordships.

Ship-Money.

*The first opinion in November 1635. was read
as followeth.*

I Am of opinion, that as where the benefit doth more particularly redound to the good of the Ports or maritime parts, as in case of Piracie or depredations upon the Seas, there the charge hath beene, and may be lawfully imposed upon them according to presidents of former times, so where the good and safety of the Kingdome in generall is concerned, and the whole Kingdome in danger, (of which his Majestie is the onely Judge) there the charge of the defence ought to be borne by all the Realme in generall: this I hold agreeable both to Law and reason.

My Lords, these opinions were delivered by the Judges severally and apart, they were procured by the solicitations of my Lord *Finch*; The Judges as hee severally procured their hands, were by him enjoyned secrecy accordingly, these opinions walked in the darke for a yeare and upwards: afterwards the procurer of them, my Lord *Finch*, liked them so well, as that he presumed to deliver them to his Majestie. By his procurement, a Letter was directed from his Majestie to the Judges for the delivery of their opinions in the se, and some other

other additionals. The former that hath beene read is more modest, its onely that his Majestie is the sole Judge of the danger, and that the Island as well as the Maritime Townes are chargeable to the defence of the Kingdome.

Its not declared in these, that this charge may be imposed by his Majestie alone, for the expression is onely, that the charge may be lawfully imposed, say not by whom.

*In the other opinions they proceed a malo ad pejus
and speake plaine English, which follows
in hæc verba.*

Charles Rex. The Case.

WHen the good, and the Case and safety of the Kingdome in generall is concerned, and the whole Kingdome in danger, whether may not the King by writ under the Great Seale of *England*, command all the subjects in this Kingdome at their charge, to provide and furnish such number of Ships with men, victuals, and munition, and for such time as hee shall thinke fit, for the defence and safeguard of the Kingdome, from such danger and perill, and by Law compell the doing thereof in case of refusall or refractorinesse, and whether in such case, is not the King the sole Judge, both of the danger, and when, and how, the same is to be prevented and avoided?

C. R.

rudges

Judges answer.

MAY it please your most excellent Majesty, we have according to your Majesties Command, severally, and every man by himselfe, and all of us together, taken into serious consideration, the Case and questions signed by your Majesty, and enclosed in your Royall Letter, and wee are of opinion, that when the good and safety of the Kingdome in generall is concerned, and the whole Kingdome is in danger, your Majesty may by writ under the great Seale of *England*, command all the subjects of this your Kingdome, at their charge to provide and furnish such number of Ships, with men, victual, and munition, and for such time as your Majesty shall thinke fit, for the defence and safeguard of the Kingdome, from such danger and perill; and that by law your Majesty may compell the doing thereof, in case of Refusall or refractorinesse; and wee are also of opinion, that in such case your Majesty is the sole Judge, both of the danger, and when and how the same is to bee prevented and avoyded.

These opinions were subscribed by all the Judges, in Serjeants Inne hall, they were afterwards published in the Starre-Chamber, that the subjects might take notice of them, and that

that they might never be forgotten, they are enrolled in all the Courts of *Westminster Hall*, in *perpetuam Rei memoriam* : Your Lordships will be pleased to give me leave to repeat them in their plaine and legall sence, which I conceive to be thus.

That his Majesty, as often as himselfe pleaseth, may declare that the Kingdome is in danger, That so often, for prevention of such danger, His Majesty by his writ, under the great Seale of *England*, may alter the property of the subjects goods, without their consent in Parliament, and that in such proportions, as his Majesty shall thinke fit, and besides the altering of the property of their goods, for the prevention of such danger, may deprive them of the liberty of their persons, and of their lives, and that in such manner as himselfe shall please.

1. The first of these (*viz*) that his Majesty may declare the danger, as often as hee pleaseth, is made good in these words, that the King is the sole Judge of the danger, and when the same is to be prevented and avoyded.

2. The second, that so often he may alter the property of the subjects goods, without consent in Parliament, in these words; That his Majesty may, by writ under the Seale of *England*, command and compell all the subjects of the Realme, at their charge, to provide and furnish ships.

3. That this may be in what proportion, his Majesty shall please in these words; that his Majesty may command them to provide & furnish such number of Ships, with men, victuals, and munition, and for such time as his Majesty shall thinke fit.

4. The last (viz.) that which concernes our persons in these two clauses.

1. That his Majestie in case of refractorinesse may compell the doing of it, this compulsion in case of refractorinesse, includes the person as well as the estate: Nay, it sounds more in the personality then otherwise. For the other, viz. whether this personall compulsion may extend so far as to life, I humbly leave it to your Lordships considerations, upon the other Clause; That is, that his Majestie is the sole Judge of such danger, and when, and how the same is to be prevented, whether the words, how it is to be prevented; in this case of personall compulsion, doth not leave the manner of it wholly in his Majesties breast.

My Lords, if these opinions extend onely to Shipmoney, it is enough his Majestie taken what he will, and when he will, if all be taken to day, and afterwards by dissent or my owne labour I get a new stocke or lively-hood, that is no more mine then the former, so that there is no property left unto the subject, though the oppinions goe no further. But My Lord, Ship-money is not the whole extent of them
Ship-

Ship-money, by these opinions is not due by any peculiarity, in Ship-money: but Ship-money is therefore due, because his Majestie is the sole Judge of the danger of the Kingdome, and when, and how the same is to be prevented, because his Majestie for the defence of the Kingdome, may at his will and pleasure charge the people, this is the ground; and upon the same reason the compulsion may be as well for the making and maintaining of Castles, Forts and Bulwarks, making of Bridges, for transporting his Armies, for provision of wages and victuals, for Souldiers, for horses and Carriages, it may be multiplyed in *infinitum*.

It may be done when the good and safety of the Kingdome is concerned, this extends to all things and at all times, *Qui jacet in terra, non habet unde cadat.*

If these opinions be Law, I humbly leave it to your Lordships considerations, whether the Government be not *Imperium legibus solutum*; The next thing I shall offer to your Lordships is the Ships-writs, a transcript of one of them directed to the Sheriffe of Dorsetshire, I shall deliver, all the rest being of the same forme: because that writ is long, I shall open it briefly, its to this effect.

There is a declaration in it that *Salus Regni periclitabatur*, that the safety of the Kingdome was in danger.

Therefore the Inhabitants of the severall Counties are commanded for the defence of the Kingdome, for the custody of the Seas, for the safeguard of the Merchants from Pyracie, inward and outward, that they should provide a ship of warre, furnished with Gunnes, gunpowder, double Tackle, and all other necessities; and this ship thus furnished at a day set, to be brought to *Portsmouth*, to bee provided for 26 weekes of Marriners wages, victuals and other necessities, and for the doing of this, authority is given to the Sheriffes of the severall Counties, to asseffe every of the Inhabitants *Secundum statum & facultates suas*, according to their estates and meanes, and further power given him by distraining and setting of the Distresse to levy these monies *Si contrarios invenerit*, then to imprison their persons: and further declares, that all this may be done, *Secundum Legem & consuetudinem Regni*; The sence I conceiue is briefly thus. That by the Lawes of the Kingdome, when his Majestie shall declare that the Kingdome is in danger, hee may alter the property of the subjects goods, and imprison their persons, nay, that not onely his Majestie, but the Sheriffes may imprison their persons; by the Law the Lord might imprison his villaine, but could not transferre that power to his Bayliffe or to any other, it was personall; That the execution of this power over the persons of the sub-

jects hath gone no further then their imprisonment, whether therein wee be not wholly beholding to his Majesties grace and goodnesse, and nothing at all to the opinions of the Judges, I leave it to your Lordships considerations.

The last thing is, the Judgement in the Exchequer, in the 13. yeare of his now Majesties Raigne, against Master *Hampden*, the Record is very long, I shall briefly open it to your Lordships, *Quarto August. 11. Caroli*, there issued Ship-writs to the severall Counties, amongst the rest to the County of Bucks, the Sheriffe assessed the inhabitants; some of them made default, and did not pay upon a *certiorari* out of the Chancery, directed to the Sheriffe, he certifies the persons that made default, together with the Summons assessed upon them. From the Chancery by *Mittimus*, These Certificates were sent into the Exchequer, to the intent Proces might issue against the defaulters. *A scire facias* issued to the Sheriffe of Bucks, who thereupon amongst other Returnes, that Master *Hampden* hath beene assessed 20 shillings, for some lands in *Soke-mandevile* in that County, which he had not paid, Master *Hampden* appeared, and upon his appearance demands *O R E R* of the Ship-writs, and the other proceedings, after his hearing thereof and understanding the contents, he demurres in Law, that is, demands the judgement and opinion of the

Judges, whether this writ was sufficient in Law, and to force him to pay the said 20 shillings.

This being a great and generall case, the Barons of the Exchequer desired the assistance of the rest of the Judges, who did joyne accordingly. The case came to be argued, there were foure Arguments, two on Master *Hampdens* side, and two on the other side, the first was in Michaelmas Terme, after Alholantide, and all the foure Arguments were speeded before Christmas day, two of them in the Terme, and no longer time would be procured for the rest, but the short vacation betweene Michaelmas Terme and Christmas, it was a Case of so little concernment, that whereas in Westminster Hall, Terme after Terme is usually given to Argue any demurrer, this must be argued betwixt Alhallontide and Christmas, throughout after the Arguments, the Councell on both sides were commanded to bring before the Judges the Records and Authorities cited, they were brought, and for the ease of the Judges, many of them on Master *Hampdens* part were abbreviated on the backsides, those abbreviations were commanded to be expounded; afterwards the Case came to Argument at the Bench, there the case was judged, and by the greater part of the Judges judgement was given against Master *Hampden*; when the Judges had delivered their Opinions, it was the

the Barons part to give judgement, the judgement was *Quod separabilia brevia predicta. & return. eorundem ac Schedulum predicta. eisdem annex. ac materia in eisdem content. suffecerit in lege existent. ad prefatū Ioannem Hampden de predicta. viginti solidis super ipsum in forma & ex causa predicta. assessi onerand. Ideo consideratum est per eosdem Baron. quod predictus Iohannes Hampden de eisdem viginti solidis oneratum exinde satisfaciat.*

My Lords, this Judgement is a full and plenary execution of the former opinions of the Judges, and of the Ship-writs, for so much as it concerns our propriety; It was given in *M. Hamptons* case onely; but binds all the subjects for so binding; it is as that an Honourable person, now in my eye, in a case depending in the Kings Bench, was denied any argument or debate, concerning the right of Ship-money, for no other reason, but that it had bin by the former Judgement adjudged already in the Chequer.

My Lords, these extra-judiciall opinions of the Judges, these Ship-writs, and this Judgement, are those carriages, which have introduced this sence of the Commons, that the fundamentall Lawes of the Realme concerning our property and our persons are shaken.

My Lords, The Commons have taken the extrajudiciall opinions published and inrolled, and the rest severally into consideration, they

they have been read openly in the house, & after long debate, and long rather in consideration of the greatnes of the matter then of the difficulty of it, they came to vote, foure severall votes passed upon them, the votes passed without so much as one negative voyce to any of them.

The votes were in substance, that they were against the Lawes of the Realm, the right of the property, the liberties of the subject, contrary to the former resolutions in Parliament, and to the petition of right.

The extrajudiciall opinions inrolled, they voted in the whole, and every part of them to be contrary to all these, for they did conceive that in these opinions, there was not any one Clause that was agreeable to the Law, but that throughout they were contrary to the Lawes.

My Lords, the things which the Cōmons took into their cōsideration, before they proceeded to their votes, were the proceedings in the Parliamēt held 3 Car. when the petition of right was framed.

The Cōmons went no higher, the reasons inducing them therto, was, because in that Parliament all those 3 had bin debated, property of goods, liberty of persons, and security of our lives.

Two of them, that is, propriety of goods & liberties of persons, by the occasions of the Cōmissions for the loane, & the Instruction wherewith these Cōmissions were accompanied, that concerning our lives, by occasion of the Cōmissions that had issued, for the execution of Martiall Law. They

They conceive that if any thing concerning these had passed both Houses and his Majesty, or the judgement of both Houses without his Majesty, it would be in vaine to looke further, that it would be *actum agere*; Nay my Lords, they had a farther consideration, that if those were already settled in that Parliament, It would not onely be derogatory to the Jurisdiction of Parliament, but dangerous to look higher as that they would infer a defect in those Proceedings, and cast an aspersiion upon that Parliament; I am commanded now to present to your Lordships considerations, those things which satisfie the Commons, which are these three.

1 The Commissions for the *loanes*, with the Instructions.

2 A Commission called the Commission of *Excise*.

3 An *Addition* of *Saving*, which was desired by your Lordships to have beene added to the Petition of right, at the time of the framing of it.

The case upon the Commission for the *Loane*, standeth thus:

13. *Octobris* 2. *Caroli*, divers Commissions were directed to sundry Commissioners, to the number of sixty or seventy Lords and Gentlemen, in the severall Counties issued, whereby a compulfary aide by way of *Loane* was required of the

C Subject,

Subject; the causes and grounds of this Demand are in the Commissions expressed to be these.

The King found the Crowne ingaged in a warre, by advice of *both Houses in Parliament*; that not onely the King and the Subject; but also his allyes beyond-Sea, were in danger.

The parts beyond-Sea where our Cloth is vented, and from whence we have most of our provision for Shipping, were indangered; His Majesties Treasures were exhausted, and his coffers empty. A *Parliament* had been summoned; but no supply.

Unavoidable necessitie both at home and abroad, multiplied the enemies: great and mighty preparations, both at Sea and Land, threatned the Kingdome dayly.

Not onely the *Kings* honour, but the safety and very subsistence of the *King and People*, and of the true *Religion* abroad, are in apparant danger of suffering irreparably, unlesse not onely a speedy, but also a present stop be made; which cannot admit so long delay as the calling of a *Parliament*: the *People* assured on the Royall Word of a *King*, that not one penny should be bestowed, but upon those publique services only, wherein every of them, and the whole body of the Kingdom, their wives, children, and posterity, have their personall and common Interests.

The

The Commissioners diligence commanded as they tendred the Kings honour, and safety of the *Realme*; Here *salus Regni periclitabatur*, the whole Kingdom was in danger, as in the *Judges* opinions, and as in the Ship-writts and judgement in the Exchequer. Nay my Lords, further; the safety and very substance of the *King, People*, and true *Religion* were in danger of suffering irreparably, the dangerous instance, not a speedy, but a present stop must be made, the supply could not stay for a *Parliament*; at this time his *Majesties* coffers were exhausted, the King found the Crowne engaged in this war, before the Accessse of it to himselfe, and that by advice in *Parliament*; all this exprest, onely lending of monies for prevention required; but it was a compulsary thing and became compulsary, by the instructions to bind over to the boord, and imprisonment for refusall. These Commissions were in the *Parliament 3^o Car.* First resolved in the *Commons House* to be against Law: afterwards by your Lordships, and consented unto by his *Majesty*, and are declared to be so in the Petition of right, and the imprisonment of the Subjects for refusall, declared in the Petition of right to be against Law.

My Lords,

The next is the Commission called the Commission of *Excise*, this was dated *ultimo*

Febr. it was dated after the Summons to that Parliament: This Commission issued to 33. Lords, and others of his Majesties Privie Councill; the Commissioners are thereby commanded to raise monies by Impositions, or otherwise; as in their judgments they shall finde to bee most convenient.

The causes wherefore these moneyes are to be raised, are expressed to be these.

The defence and safety of the King and people, which without extreamest hazard of the King, Kingdome and People; and of the Kings Friends and Allies beyond Seas, cannot admit no longer delay: inevitable necessity, wherein forme and circumstance must rather bee dispensed withall, than the substance lost.

The Commissioners not to faile therein, as they tendred his Majesties Honour, and the safety of the Kingdome and people.

Here *Salus Regni periclitabatur*, the whole Kingdome declared to be in danger, in greater and nearer, then in the opinions of the Shipwrits or Judgements in the Chequer.

In the Parliament 3. *Caroli*, this Commission was adjudged by the Commons to be against the Laws of this Realme, and contrary to the Judgement given in the Petition of right, and after a conference with your Lordships, desired his Majesty that it might be cancelled: the then Lord-Keeper shortly

shortly after brought it cancelled to your Lordships in the House, and there said it was cancelled in his Majesties presence: you sent it cancelled to the *Commons* to be viewed who afterwards sent it back to your Lordships.

My Lords, the last is the addition of saving, desired to be added to the Petition of right, which was in these words.

Wee humbly present this Petition unto your Majesty, not onely with a care of preserving our owne Liberties, but with due regard to leave entire the Sovereaigne power, wherewith your Majesty is trusted; for the Protection, Safety, and happinesse of Your people: Your Lordships desire of this Addition to the Petition of right, was taken into consideration by the *Commons*, and after debate, it was thought fit by them to be rejected. A conference was had with your Lordships, and Master *Noy* appointed by the *Commons* to declare the reasons of their resolution; your Lordships not receiving satisfaction at that conference, whether this Addition should be rejected or not: It was again debated in the *Commons house*, they ventured upon the same bottome againe; It was thereupon resolved to be rejected, the reasons of their rejections were these in summe:

First, they confesse that if these words were taken as a bare proposition onely, without any further reference to the Petition of right,

right, that it was a true proposition.

That is, that the Law hath trusted the King with Sovereigne power for the protection, safety, and happinesse of the people.

But if it should be added to the Petition of right, as was desired; then was it not true, but would make the Petition of right *felo de se*, and wholly destructive to it selfe in all the parts of it; that it would proceed *a bene divisis, ad male conjuncta*: for then the petition of right, as they resolved, would have this sence.

Whereas in the petition of right, it is said, that no aide, tax, tallage, or other charge whatsoever, may be imposed upon the people, without their free consent in *Parliament*; it would have this construction. Its true, it cannot be done by the Kings ordinary power, but it may bee done by that Sovereigne power wherewith the Law hath entrusted his *Majesty* for the protection, safety, and happinesse of the people.

So likewise for imprisonment, that they ought not to bee imprisoned without due processe of Law. It is true ordinarily, that the King may imprison by his Sovereigne power, wherewith the Law hath entrusted him for the protection, safety, and happinesse of the people.

So that, for that Martiall Law, that the Subjects lives ought not to be taken away, unlesse by due processe of Law. It's true ordinarily,

dinarily, but the King may doe it by his Sovereaign power, wherewith the Law hath intrusted him for the protection, safety, and happinesse of the people: whereby they conceived that it would not onely make the petition of right to bee wholly destructive of it selfe, but likewise this petition of right would leave the subjects in a far worse condition than it found them; for it would necessarily inferre, that which is against the Law: viz. that the King by his Sovereaign power, when he pleased to declare that it was for the good of the people, might doe all this.

Your *Lordships* at a conference of both *Houses*, engaged on the part of the *Commons* by Serjant *Glanville*, and Sir *Henry Martin*, received satisfaction from these reasons; and consented to the leaving out of this Addition; and accordingly, the petition of right passed, and is printed without it.

My Lords, these were the things I was commanded to present unto your *Lordships*: other things there were, as the sentence against Bishop *Manwaring*; but these weighed so much with the *Commons*, as that they conceived they needed no more.

My Lords, these presidents of that *Parliament*, and these opinions of the *Judges*, the *Shipwrits*, and the *Judges* in the *Exchequer*; they are like the two Buckets of a Well, if one goe up, the other must goe downe:

downe: *non bene conveniunt.*

My Lords, we have not cited these presidents out of diffidence, that your Lordships had forgotten them; but because others have; or that wee distrust your Lordships Justice, or you had forgotten them: for before these were, your *Lordships* concurred in opinion with your worthy Ancestours, that first gave them. Their noble blood runnes in your veynes. It's now to confirme your owne judgements as well as theirs: In your Lordships breasts, there are the same Magazines and Fountaines of Honour and Justice, as was then, these Judgements and proceedings were the Actions of both houses, the danger by the violation is equall.

The Commons see nothing in the Judges opinions or judgement, why they should recede from their former judgements, they hope the same from your *Lordships*.

Besides, my Lords, that the case is now much varied from what it was then; not only in the matter, but as it concernes the Honour and jurisdiction of this great Judicatory, the Parliament.

The breach of Priviledges in the members is tenderly resented, because that without this freedome, they cannot advise and consult concerning the *Ardna Regni*.

But when they have done all to have their Judgements, and their Acts of Parliament overthrowne by the Judges afterwards, this makes

makes *Parliaments* to be nothing, this sets up the *Judges* above the *Parliament*, this puts us out of hope of redresse; if they may overthrow the proceedings of that *Parliament* of 3^d *Caroli*, they may by the same reason overthrow the *Actions* of this, and of all future *Parliaments*.

My Lords, this was not the practise of their predecessours, though but in private causes; if difficulty of Law arose, they alwayes consulted this Oracle, and thence received their answer how to give Judgement. Judgements in the *Highest Court of Westminster Hall*, I meane in the *Kings Bench*; where the proceedings are (*coram Rege*) are here reverfable by *Writ of Error*. In causes of great and generall concernment, they ever adjorned them hither as things too high for them.

Qui consulta patrum, qui leges juraque servat, doth well, they have taken that in their hands they had not to doe withall; and how they have handled the matter, your *Lordships* have heard.

The *Judges*, as is declared in the *Parliament*, they have here made themselves the executioners of them; they have endeavoured the destruction of the *Fundamentalls* of our *Lawes* and *Liberties*. *Holland* in the *Low-countries* lyes under the *Sea*, the superficies of the *Land* is lower then the superficies of the *Sea*: Its capitall therefore for

Roll: of XI. Rich. 2^d, are the Executors of the Statutes and of the Judgements & Ordmances of Parliament, they have here made.

any man to cut the Bankes, because they defend the Countrey.

Besides our owne, even forraine Authors as *Comineus* observes, that the Statute *de Tallagio*, and other old Lawes, are the Sea walls, and bankes, which keepes the Commons from the inundation of the Prerogative.

These Pioners, they have not onely undermined these Bankes, but they have levelled them even with the ground.

If one that was known to be *hostis Patriæ*, had done this, though the damage be the same, yet the guilt is lesse.

But the *Conservatores Riparum*, the Overseers intrusted with the defence of these banks, for them to destroy them, the breach of trust aggravates, nay alters the nature of the offence.

Breach of trust, though in a private person, and in the least things, is odious amongst all men; much more in a publicke person, and in things of great and publick concernment, because great trust binds the party trusted to greatest care and fidelity.

Its Treason in the Constable of *Dover Castle* to deliver the Keyes, to the knowne enemies of the Kingdome; because that Castle is the Key of the Kingdome: whereas if the house-keeper of a private person, deliver possession to his Adversary; its a crime parce punishable by Law.

sc The Judges under Majesty, are the persons

sons trusted with the Lawes; and in them, with the lives, liberties, and estates of the whole Kingdome: This trust of all we have, is primarily in his *Majesty*; and from him delegated to his *Judges*.

His *Majesty*, at his Coronation, is bound by his oath to execute Justice to his people, according to his Lawes; thereby to assure the people of the faithfull performance of this great trust. His *Majesty* againe, as he trusts the *Judges* with the performance of this part of the oath: so doth he likewise exact another oath of them for their due execution of Justice to the people according to the Lawes; hereby the *Judges* stand intrusted with this part of his *Majesties* oath.

If therefore the *Judges* shall doe wittingly against Law, they doe not onely breake their oathes, and therein the common faith and trust of the whole Kingdome, but do as much as in them lyes, smeere and blemish the sacred Person of his *Majesty*; with the odious and hatefull sinne of perjury.

My Lords, the haynousnes of this offence is most legible in the severe punishments which former ages have inflicted upon those *Judges*, who have broken any part of their oathes wittingly, though in things not so dangerous to the Subject, as in this case in question.

Sir Thomas Wayland chiefe Justice of the

Common Pleas, Ed. 1. was attainted of Felony for taking bribes, and his lands and goods forfeited; as appears in the *Pleas of Parliament*, 18^o Ed. 1. and he was banished the Kingdome as unworthy to live in that State, against which he had so much offended.

Sir *William Thorpe* chiefe Justice of the *Kings Bench*, in E. 3^d time, having of five persons received five severall bribes, which in all amounted to 100 pounds; was for this alone adjudged to be hanged, and all his lands and goods forfeited, the reason of this Judgment is entred in the Roll in these words.

Quia predict. Willielmus Thorpe, qui sacramentum Domini Regis erga Populum saum habuit, ad custodiendum, fregit malitiose, false, & rebelliter quantum in ipso fuit; because that hee, as much as in him lay, had broken the Kings oath made unto the people, which the King had intrusted him withall.

There is this notable Declaration in that Judgement; that is, that this Judgement was not to be drawne into example, against any other Officers who should breake their oathes, but onely against those *Qui predictum sacrum fecerunt, & freguerunt, & habent leges Anglia ad custodiendum*; that is, onely to the Judges oathes, who have the Lawes intrusted to them.

This Judgement was given 24. Ed. 3. the next

next yeare in the *Parliament* 25. *Ed.* 3. it was debated in *Parliament*, whether this Judgement was legall; & *nullo contradicente*, it was declared to be Just, and according to the Law: And that the same Judgement may be given in time to come upon the like occasion. This case is in point, that its death for any Judge wittingly to break his oath, or any part of it.

This oath of *Thorpe* is entred in the Roll, and is the same *verbatim* with the Judges oath, in 18. *Ed.* 3. and the same which the Judges now take.

Your *Lordsships* will give me leave to observe the differences betweene that and the case in question.

First, that of *Thorpe* was onely a selling of the Law by retayle to those five persons, for he had onely five severall bribes of those five persons; the passage of the Law to the rest of the Subjects, for ought appeares, was free and open.

But these opinions are a conveyance of the Law by whole sale, and that not to, but from the Subject.

In that of *Thorpe*, as to those five persons, it was not an absolute denyall of Justice, it was not a damming up, but a streitning onely of the Channell.

For whereas the Judge ought *Judicium reddere*, that is, the Law being the Birth-right

right and Inheritance of the Subject, the *Judge* when the parties in suite demand judgement should *redare*, freely restore this right unto them; now he doth not *dare* but *vendere* with the hazard onely of perverting Justice; for the party that buyes the judgement may have a good and honest cause.

But these opinions besides that they have cost the Subjects very deare, dearer than any; nay I thinke I may truly say, then all the unjust Judgements that ever yet have been given.

Witnesse the many hundred thousand pounds which under Colour of them have beene levied upon the Subject, amounting to seven hundred thousand pounds and upwards in money payd unto the Treasurer of the Navy; besides what the Subjects have beene forced to pay to Sheriffs, Bayliffs, and others, which altogether as is conceived amounts not to much lesse than a Million: besides the infinite vexation of the Subjects by suits in Law, binding them over to attendance at the Counsell-boord taking of them from their necessary employments in making of Assesses, and collections, and imprisonments of their persons.

I say *my Lords*, besides what is past to make our miseries compleat, they have
as

as much as in them lyes made them endlesse; for by these opinions they have put upon themselves and their successors an impossibility of ever doing us right againe, and an incapacity upon us of demanding it so long as they continue.

My Lords, in that sore Famine in the Land of *Agypt*, when the Inhabitants were reduced to the next doore to death; for there they say, *why should wee dye for bread*. First they gave their money, next their flocks and cattell; and last of all, their persons and their Lands, for bread, and all became *Pharoaks*; but by this *Lex Regia*, there is a transaction made, not onely of our persons but of our bread likewise, wherewith our persons should be sustained. That was for bread, this is of our bread. For *my Lords*, since these opinions (if we have any thing at all) we are not at all beholding to the Law for it, but are wholly cast upon the mercy and goodnesse of the King.

Againe, there the *Agyptians* themselves sold themselves and al they had to the King; if ours had been so done, if it had been done by our owne free consent in *Parliament*, we had the lesse cause to complaine; but it was done against our wils, and by those who were trusted, and that upon oath; with the preservation of those things for us.

My Lords, the Lawes are our Forts and
Bulwarks

Bulwarks of defence, if the Captaine of a Castle, onely through feare and cowardise, and not from any complience with the enemy, surrender it; this is Treason as was adjudged in the *Parliament*, 1. *Rich.* 2. in the two cases of *Grymes* and *Weston*, and in the case of the Lord *Gray* for surrendring of *Barnwicke* Castle to the *Scots* in *Edm.* 3^d. time; though good defence have been made by him, and that he lost his eldest Sonne in maintenance of the Siege; and yet the losse of a Castle loseth not a Kingdome onely, but the place and adjacent parts, without trouble to the whole.

But by these opinions there is a surrender made of all Legall defence of propriety, that which hath been preached is now judged that there is no *meum & tuum* betwene the King and the people, besides that which concerns our persons.

My Lords, the Law, it is the Temple, the Sanctuary whither the Subject is to runne for shelter and refuge: hereby it is become *Templum sine numine* as was the Temple built by the *Roman Emperour* who after he had built it, put no Gods into it.

We have the letter of the Law still, but not the sence.

We have the Fabricke of the Temple still, but the Goddesse, the *Dis-Tutelar*es are gone.

But

But my Lords this is not the case (that is) that the Law now ceaseth to aide and defend us in our rights, for then possession alone were a good title, if there were no Law to take it away, *occupanti concederetur & melior esset possidentis conditio*. But this (though too bad) is not the worst, for besides that which is privative in these opinions, there is somewhat positive: For now the Law doth not onely not defend us, but the Law it selfe is made the instrument of taking all away.

For whensoever his Majesty or his successors shall be pleased to say that the good and safety of the Kingdome is concerned, and that the whole Kingdome is in danger: Then when and how the same is to be prevented, makes our persons and all wee have lyable to bare will and pleasure.

By this meanes, the Sanctuary is turned into a Shambles, the Forts are not slighted, that so they might neither doe us good or hurt: But they are held against us by those who ought to have held them for us, and the mouth of our Canon is turned upon our selves.

My Lords, in these expressions, there is no reflexion upon his Majesty. It is onely that those Iudges would have forced upon the law an unnaturall and contrary motion, his Majesties carriage in the businesse cleers his justice.

The first opinion of the Iudges under their hands, was procured by my Lord *Finches* sollicitatio only, & by him brought to his Majesty

These opinions procured the letter from his Majesty for the opinions inrolled, wherein, as likewise in the case in the *Chequer*, the Judges were left free, *as was acknowledged by two of the Judges of the Chequer Chamber*, who Argued against those opinions, with this protestation. That if there were any miscarriages in that businesse it must fall wholly upon themselves, that the King was blamelesse.

Ly Lords, we know his Majesties justice is the fairest, the richest Diamond in his crown, the dust which these men would have blown, and forc'd upon it, it's false short, and with your Lordships helping hands, it will, wee hope, be cast upon their owne faces, a fitter place for it then the other.

My Lords, the oaths of the Judges as they bind them to the due administration of justice to the Subjects, according to the Lawes, so as they be of the Kings Counsell, by their oaths they are bound lawfully to counsell him, *that is, when their opinions are demanded, they are to deliver them according to the Law.*

I shall therefore put your Lordships in mind of the memorable proceedings against these Judges, who have broken this part of their Oath in that notable Parliament, held the eleventh of Richard the second.

In this Parliament, judgement of high treason was given against eighteen severall persons, and all (save one of them) of eminent ranke, three Privie Counsellours, the Archbishop of
Yorke,

Rorhe, the Duke of Ireland, and Earle of Suffolke, the Bishop of Exeter, the Kings Confessor, five Knights, some whereof had bin servants to Edward the 3^d, and all save one servants to the then King, and some of them of noble Descent, 6 Judges, Lockton the Kings Serjeant at Law, Blake of the Kings Counsell at Law, and Uske the Under Sheriffe of Middlesex: of these eighteen, 8 were executed (that is) Sir Robert Tresilian the chiefe Justice, 5 Knights, Blake of the Kings Counsell at Law, and Uske the under Sheriffe, three, that is, the Archbishops of York, Duke of Ireland; and Earle of Suffolk fled.

The rest had their lives pardoned, but were banished; their lands and goods forfeited, and little pensions allowed the during their lives: It was made Felony for any one to procure their pardons, and they to be dealt withall as Traytors, if they returned from their banishment: and of those eightene persons all save three were impeached by the Commons.

The offences which procured these exemplary punishments, although their proceedings be long and comprehended all that was done in this *Parliament*, I'll briefly open them to your Lordships. During the Minority of that King by ill counsell of some neere his person, there were miscarriages in government. In the tenth yeere of his Reigne, and the twentieth of his age, a *Parliament* was holden, in that *Parliament* in aid of good government, and of due execution of the Laws, a Commis-

tion was awarded to 12 severall Peeres and others of greatest wisdom & fidelity, the commissioners had power in all things concerning the household, Courts of justice, and the Revenues, in a word in all things concerning the good of the Realme, with full power finally to determine in execution for the Honor of the King, the better governance of the peace, & lawes of the Realme & relief of the people.

This Commission was to endure one yeare, at the yeares end the King would be of full age.

My Lords, the endeavouring to overthrow this Commission issued by authority of Parliament for the welfare of the Realme, upon Pretence that it trenched upon the Royall power, tended to the disherison of the King, and derogation of the Crowne, together with the destruction of the Commissioners who procured it, and put the same in Execution, upon pretence that they and some others had in Parliament forced the Royall assents.

My Lords, the conspiring to overthrow this Commission, & the procurers of it, is the case in brieve, for although there be divers other Articles against many of them, yet this was the ground-work of all, & this singly & alone is declared in all the proceedings in that Parliament to be Treason, Of these 18. persons condemned, five of them were plotters (viz.) the Archbishop, Duke of Ireland, Earle of Suffolk, Tresilian the Chiefe Justice, And Sir Nicholas Bramber, these insinuated into the King that this Commission was in diminution of his

his kingly power, that the procurers of it had extorted his Royall assent, and that this was Treason: thereupon *Blake* one of the Kings Counsell at Law was advised withall, who declared his opinion, that it was Treason, hee was commanded to prepare an inditement of Treason against the Commissioners, & some of the procurers of it, who had bin active therin.

The Inditement was drawne by him, which is entred in the Role, and is to this effect.

That they had trayterously conspired amongst themselves in the Parliament, to make this Commission by authority of Parliament against the Regality of the King to his Disberison & Derogation of the Crowne, that they compelled the Kings consent, and that they confederated and bound themselves to maintaine one another in so doing.

It was intended that they should be tried upon this Inditement in Middlesex or in London, Vske the under Sheriffe of Middlesex was acquainted with the businesse, who was to prepare things for the effecting of this Designe, some of the parties to be indited, not being Peeres, which he performing accordingly, was therefore executed.

The five plotters, that the King might the more confide in their Counsels (for so are the words of the Record) & that under the colour of Law they might cover their malice from the King, and the Kingdome, before the tryall was to be had, they advise the King to demād

the opinion of some of the Judges, that is of the two chiefe Justices, and chiefe Baron, the Iudges of the *Common Pleas*, sixe in number, and of *Lockton* the Kings Serjeant, *Blake* of the Kings Counsell at Law was commanded to draw up these questions for the Judges opinions, who did it accordingly.

For the drawing up of these questione, and the Indictment, Blake was condemned and executed.

The question being drawne into writing, the Judges were sent for to Nottingham Castle, where, in the Kings presence they were commanded upon their allegiance to deliver their opinions.

1. The first question was whether the Commission was in derogation of the Crown, they answered that it was.

2. The second question was whether the perswading and urging the Kings consent in Parliament thereto was Treason, they answered, that it was, though there were some other questions asked, all concerning Parliamentary proceedings, yet these were the maine, and those for which they are condemned, as appears, by the replication of the *Commons* to the Judges answer, and by the words of the judgement *viz.* that they knew that this commission was awarded in Parliament, that it was for the publike good, that they knew of the traiterous intents to destroy the procurers of this Commission, that they knew the Law, and

and that it was not Treason, and had delivered their opinions thereby under colour of Law, to cover their treasonable intent, and therefore judgment of treason was given against them, and against *Lofton* the Kings Serjeant at Law, who had subscribed the opinions with the Judges.

Sir *Simon Burley*, one of the five Knights that were executed, was condemned onely for conspiring the death of the procurers of this Commission, and although there be other articles against the rest, yet this alone is adjudged treason in the severall judgments against every one of the eighteen.

1. My Lords, it is observable in all these judgements, that they are adjudged Traytors, as well against the person of the King, as against the *Common-wealth*.

2. Secondly, it is there declared upon great advice taken, that in Treasons which concern the King and Kingdome, they are not bound to proceed according to the rules of the common Law and inferiour courts, but according to the course of *Parliaments*, so as may bee for the common good.

3. Thirdly, Iudgement was given in *Parliament*, and execution awarded, and afterwards a Bill of confirmation passed, in respect of their Lands, to give them from a day past, and for Declaration that this should be no president to inferiour Courts to adjudge the same cases Treason, save onely in Parliament.

These

These judgements were not huddled up in haste, but they were given upon long and *mature deliberation*, these judgements were the whole worke of *that Parliament*, and the proceedings against the five plotters were begun the fourteenth of *November*, & the judgments were not given till the thirteenth of *February* following, which was a *quarter* of a yeer: And is declared in the Roll, that they spent a long time, and took great *pains to examine* the Evidences, the better thereby to *satisfie* their owne consciences and the World.

I insist the more upon this to take away all blemish from these proceedings.

It is true my Lords, these judgments were afterwards in the *Parliament of 21. Ric. 2.* revoked and made void.

But my Lords, *that Parliament of 21. Ric. 2.* of Revocation was held by force, as it is declared in the *Parliament Rols of 1. Hen. 4. Nov. 21. & 22.* that it was held *viris armatis, & sagittariis immensis.*

The Knights of *Parliament* were not elected by the Commons, *proxtimos exigit, sed per regiam voluntatem*: and so the Lords, *summoniri fecit Rex Dominos sibi adherentes.*

My Lords by these proceedings, it doth appear, that this *Parliament of Revocation* was no free *Parliament*, if at all it deserve the name of a *Parliament*, but to put all out of doubt, the *Parliament of 1. Hen. 4. No. 48.* the judgments of *Revocation* are declared to be *iniqua*.

iniqua, & omni juri & rationi repugnantia, erroneous, wicked and contrary to all right and reason; and in the *Parliament* of 1. Hen. 4. in print these Attainders are confirmed: so that these judgements of Attainder have the authority of two Acts of *Parliament*, both of them of force at this day.

Your Lordships will give me leave to observe the differences and agreements, between the offences of those, & of the present Judges, and as well in the way and manner of procurement, as in the matter of them: for the manner of procurement, those Judges in *Rit. 2.* time were in the Kings presence, and as it is in the *Parliament Roll* of 1. Hen. 4. Nov. 18. they were *violenter attrahi*, violently drawne to deliver their opinions, and that *metu mortis & cruciatus corporis*, for the feare of death and tortures of their bodies, and at their tryals severally, they say, that in part violence had bin offered to their persons, because they had differed in the delivery of their opinions. My Lords, this was such a miscarriage in the Judges, these circumstances considered, as might *cadere in virum fortem & constantem*, but my Lords, feare or cowardize, is no plea for delivering up of the Forts and Bulwarks of the Kingdome.

But in the present businesse, there is none of all this, it came from within, there is no outward force: In those of *Rit. 2.* it was *Actus unicus*, once done at *Nottingham Castle*; if the

D Judges

Judges had bin put to it the second time, perhaps the rest as well as some of them had repented, and would not have done it over again, for *Belknap*, the chiefe Iustice of the Common Pleas, the same day declared his sorrow, and said, that now there remained nothing but a Horse, a Hurdle, and a Halter, & *Falkthorp* another of the the next day declared his griefe, for what he had done, But here after the opinion in Nov. 1635, a yeare after, viz. 1636, they proceed a *peſſimo ad pejus peſſimo*, for that was with additions, most of them declared their opinions in their circuits, and a yeare after confirmed it againe by the Indictment in the Exchequer, here it was done yeare after yeare in cold blood: one murderous blow, whereupon death followes, is Felony, but to multiply wounds upon the dead body, and to come againe in coole blood to doe it, it shewes the height of malice. In these two things they agree:

1. That which the Iudges did in *Richard* the 2^d time, they did it against their owne knowledge, they knew the Commission was done by Act of Parliament; so here they knew the Petition of Right damn'd the Commissions of Loanes, a stronger case then that they subscribed: many of them knew that the Commission of Excise was damn'd in Parliament, they knew the other proceedings in Parliaments, and if they had forgotten them, they were afterwards put in minde of them, they needed not to have consulted with Books and
Iour-

Journals of Parliaments, saving onely with their owne memories.

2. They agree in this, that their opinions tended to the subversion of the Lawes and Statutes of the Kingdome, for in that of Ric. 2. the offence was, the endeavouring to overthrow Parliaments, and Parliamentary proceedings, the conspiracy of the death of the procurers was onely an aggravation. It was not Treason to conspire the death of a Privy Counsellour, or to kill a Iudge, unlesse he be upon the Bench, and in that case it is Treason, because of the malice, not of the person, but to the Law; so that there the Treason lay in this, not that they conspired barely against their persons: but with reference to their proceedings in Parliament, and thereby to overthrow the Acts of Parliament, wherein these persons had bin principall Actors. But in this againe they disagree, for in that case there was onely a conspiracy, no death followed to the Procurers of the Commission, nor was the Commission overthrowne, all that was done, was onely this, that a Warrant was directed to the Lord Major of London, for apprehending their persons to bring them to tryall, which yet was not done. But here (after the opinions delivered) judgment was afterwards given by them in the Exchequer, and execution awarded thereupon; for so much as concernes our property.

And likewise in the Kings Bench, where the judgments after the judgments in the Exche-

quer refused to heare any more debate of the matter, and so for the liberty of our persons by keeping divers of the subjects in prison, term after term, for not paying Ship-money, and other things depending upon those opinions, when they had bin brought before them upon their *Habeas Corpus*.

4. In that of *Ric. 2.* it was for overthrowing but of one Act of Parliament, which was likewise introductive of a new Law, for the Commission had no rise from the Common Law, for in truth it was derogatory to the Crowne: It had onely the strength of the Parliament to support it, which was sufficient, it was for the common good.

But here the endeavour was at once not to blow up one Act of Parliament, but all; and these not introductive, but declaratory of the Common Law, as was the petition of Right, the Statutes there mentioned, and the Resolutions.

That of *Rich. 2.* was but the blowing up of the upper Deck, this of the Common Law, and the Statutes too, and the old foundations and the structures built upon them all together.

In that of *Ric. 2.* it was only to overthrow a Temporary Act of Parliament, that was to continue no longer then one yeare, but this to make an eternall devastation (for toties quoties) to the worlds end, as his Majesty or his Successors shall say, that the Kingdome is in danger, may these opinions be put in execution, and likewise they are enrolled in all the Courts of Westminster Hall in *perpetuam rei memoriam*. The

The sin against the holy Ghost is therefore unpardonable, because it takes from the party Repentance, the meanes of pardon; to put vs therefore into a case of desperation, some of them have publikely and upon the Bench declared, that this prerogative is so inherent in the Crown, as that it cannot be taken away by Act of Parliament.

As they have put an impossibility upon themselves, so would they put an impossibility upon his Majesty, your Lordships and the whole Parliament, for ever righting us again.

My Lords, *contraria juxta se posita magis elucescunt*, I have presented your Lordships with the obliquity of the ill Judges in Ric. 2. time, giue me leave to present your Lordships with one example of a contrary nature. And that was in Queen Elizabeths time, in the 29 yeare of her Majesties Reign: She erects a new office in the Common Pleas, for the making of *Superfedeas* on *Exigents* that issued there, shee grants it to Rich. Cavendish her servant, sends to have him admitted, but the Iudges delay the doing of it for this reason, because the Prothonoraries and Phillizers claymed the making of those Writs. The Queen sends a sharp Letter, and commands them forthwith to admit him, yet the Iudges forbear: the Queen sends a sharper Letter, commanding them to shew the Reasons of their contempt and disobedience to the then Lord Keeper, and the

Earle of Leiceſter, no mean men in thoſe days, the Judges deliver their Reaſons why they had refuſed, and it was becauſe others claimed the making of thoſe Writs.

The Queene ſends a fourth peremptory meſſage for their admitting him, with this Reaſon, that if the others were put out, they were rich and able men, and that her Courts of Juſtice were open, where they might demand their Rights.

⁂ This was not to take away the right, but to put them to their Action.

This remains
under the ſac's
of Anderſon
the Lord chiefe
Juſtice in a
Book of his
Reports.

The Judges humbly returned this anſwer, that the Queene had taken her oath for the due execution of Juſtice, according to the Law, that they did not doubt, but that when her Majeſty was inform'd, that it was againſt Law, ſhe would doe what befitted her; for their parts they had taken an oath to God, to her and the Commonwealth, and if they ſhould doe it without proceſſe of Law, before them, and onely upon her command, put the other out of poſſeſſion, though the right remained to them, it were a breach of their Oaths, and therefore if the feare of God were not ſufficient, they told her the puniſhment that was inflicted, upon their predeceſſours for breach of their oaths (citing theſe of Thorpe of Ric. 3. time) that they might bee ſufficient warning to them: the Queene hearing of theſe Reaſons was ſatisfied, and the Judges heard no more of the buſineſſe.

Theſe Judges have had examples of both kinds

kind's before them, they might have chosen the good and refused the bad.

My Lords :

Besides these judgments and opinions, the Commons will in due time bring up these Judges with their other Indgements, *corporum causis*, for your Lordships will easily conceive that they who have done this have done more : the principall of them, I meane my Lord Keeper, stands accused before your Lordships of high Treason : He is not here, Justice goes *pede lento, sed certo*, it will overtake him at the last.

The next step that is making after him, are the Articles of his impeachment, which with your Lordships patience are now ready to be opened and delivered to your Lordships.

FINIS.